

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

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NANCY WILSON, Regional Director
of the Sixth Region of the
National Labor Relations Board,
for and on behalf of the
NATIONAL LABOR RELATIONS BOARD,

Petitioner

v.

Civil Number 1:18-cv-65

KRISE TRANSPORTATION, INC.

Respondent

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FINDINGS OF FACTS AND CONCLUSIONS OF LAW

This cause came to be heard upon the verified Complaint and Petition of Nancy Wilson, Regional Director of the Sixth Region of the National Labor Relations (“the Board”), for a temporary injunction pursuant to Section 10(j) of the National Labor Relations Act, as amended [61 Stat. 149; 73 Stat. 544; 29 U.S.C. § 160(j)] (“the Act”), pending the final disposition of the matters involved herein pending before the Board, and upon the issuance of an order to show cause why injunctive relief should not be granted as prayed for in said petition. The Court has fully considered the petition, evidence, and arguments of counsel, and upon the entire record, the Court makes the following:

FINDINGS OF FACT

1. Petitioner is the Regional Director for the Sixth Region of the Board, an agency of the United States, and filed this Complaint and Petition for, and on behalf of, the Board.
2. Jurisdiction of this Court is invoked pursuant to Section 10(j) of the Act.

3. (a) On June 29, 2017, the International Brotherhood of Teamsters, Local 397 (“the Union”), pursuant to the provisions of the Act, filed a charge with the Board in Case 06-CA-201673, alleging that Krise Transportation, Inc. has engaged, and is engaging, in unfair labor practices within the meaning of Sections 8(a)(1), (3), and (5) of the Act.

(b) On August 24, 2017, the Union, pursuant to the provisions of the Act, filed the first amended charge with the Board in Case 06-CA-201673.

4. (a) Following an investigation of the allegations in which Respondent were given the opportunity to present evidence and legal argument, the General Counsel of the Board, by the Petitioner, on behalf of the Board, pursuant to Section 10(b) of the Act, issued a Complaint and Notice of Hearing on November 30, 2017, alleging that Respondent engaged, and is engaging, in unfair labor practices as charged within the meaning of Section 8(a)(1), (3), and (5) of the Act.

(b) On December 7, 2017, upon the charge filed in the case described above in paragraph 3, the General Counsel of the Board, by the Petitioner, on behalf of the Board, pursuant to Section 10(b) of the Act, issued an Amended Complaint and Notice of Hearing against Respondent.

(c) On December 21, 2017, Respondent, by its Counsel, filed an Answer to the Amended Complaint. A copy of that Answer is attached hereto as Exhibit 2-C.

5. There is, and Petitioner has, reasonable cause to believe, that the allegations set forth in the Amended Complaint and Notice of Hearing are true, and that Respondent has engaged, and is engaging, in unfair labor practices within the meaning of Sections 8(a)(1), (3),

and (5) of the Act, affecting commerce within the meaning of Sections 2(6) and (7) of the Act. More particularly:

(a) At all material times, Respondent, a corporation with an office and place of business in Punxsutawney, Pennsylvania, and a facility located in Albion, Pennsylvania, (“Respondent’s facility”), has been engaged in providing transportation of school students to school districts in Pennsylvania, including the Northwestern School District.

(b) About April 18, 2017, Respondent acquired the contract to provide school bus services to the Northwestern School District (“the District”), which services were formerly provided by STA of Pennsylvania, Inc. (“STA”).

(c) The contract between Respondent and Northwestern School District, described above in paragraph 5(b), is effective from July 1, 2017 to June 30, 2024.

(d) Since July 1, 2017 Respondent has continued to operate the business of STA in basically unchanged form and since August 21, 2017, has employed as a majority of its employees individuals who were previously employees of STA.

(e) In the alternative, but for the conduct described below in paragraphs 5 (m) and (n) and the operations described above in paragraphs 5 (a) through (d), Respondent would have employed, as a majority of its employees at Respondent’s Albion facility, individuals who were previously employees of STA.

(f) Based on the operations described above in paragraphs 5 (a) through (e), Respondent has continued the employing entity and is a successor to STA.

(g) During the 12-month period ending May 31, 2017, Respondent, in conducting its business operations described above in paragraph 5 (a), derived gross revenues in excess of \$250,000.

(h) During the 12-month period ending May 31, 2017, Respondent, in conducting its business operations described above in paragraph 5(a), purchased and received goods valued in excess of \$5,000 directly from points outside the Commonwealth of Pennsylvania.

(i) At all material times, Respondent has been engaged in commerce within the meaning of Sections 2(2), (6), and (7) of the Act.

(j) At all material times, the Union has been a labor organization within the meaning of Section 2(5) of the Act.

(k) At all material times, the following individuals held the positions set forth opposite their respective names and have been supervisors of Respondent within the meaning of Section 2(11) of the Act, and agents of Respondent within the meaning of Section 2(13) of the Act:

Timothy Krise - Owner-Operator

Glen Black - Terminal Manager

(l) About July 1, 2017, Respondent was hiring, or had concrete plans to hire, approximately 26 employees to perform work pursuant to its contract to provide transportation services to the District.

(m) Since about the dates set forth opposite their names, Respondent refused to hire the following applicants who were previously employees of STA for employment:

<u>Name of Applicants</u>	<u>Date</u>
Patty Dombrowski	June 5, 2017
Anita Gabel	June 5, 2017
Holly Graves	June 7, 2017
Christopher Lock	June 7, 2017
Brenda Mosko	June 6, 2017

Richard Otteni June 1, 2017

Gayle Reed June 1, 2017

Dorothy Swift June 1, 2017

Harold Tewell June 6, 2017

(n) Respondent engaged in the conduct described above in paragraph 5 (m) because the named employees belonged to the Union and engaged in concerted activities, and to discourage employees from engaging in these activities.

(o) The following employees of Respondent (“the Unit”) constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All regular school bus drivers, van drivers, casuals and monitors employed by Respondent at its Albion, Pennsylvania branch, excluding all office, clerical, janitorial/cleaning, security, maintenance, safety directors, safety instructors, third party testers, non CDL drivers, and supervisors and management.

(p) From about 2004 until about June 30, 2017, the Union had been the exclusive collective-bargaining representative of the Unit employed by STA, and during that time the Union had been recognized as such representative by STA. This recognition has been embodied in successive collective-bargaining agreements, the most recent of which was effective from August 1, 2012 to July 31, 2017.

(q) Since about August 21, 2017, based on the facts described above in paragraphs 5 (b) through (f), (o), and (p), the Union has been the designated exclusive collective bargaining representative of the Unit.

(r) From about 2004 to July 1, 2017, based on Section 9(a) of the Act, the Union had been the exclusive collective-bargaining representative of the Unit employed by STA.

(s) Since about August 21, 2017, based on Section 9(a) of the Act, the Union has been the designated exclusive collective-bargaining representative of the Unit.

(t) About August 17, 2017, the Union, by letter, requested that Respondent recognize it and bargain collectively with the Union as the exclusive collective-bargaining representative of the Unit.

(u) Since about August 23, 2017, Respondent, by letter, has failed and refused to recognize and bargain with the Union as the exclusive collective-bargaining representative of the Unit.

(v) Since about August 15, 2017, Respondent has established rates of pay, benefits, hours of work and other terms and conditions of employment of the Unit that varied from the terms set forth in the collective bargaining agreement described above in paragraph 5(p).

(w) The subjects set forth above in paragraph 5(v) relate to wages, hours, and other terms and conditions of employment of the Unit and are mandatory subjects for the purposes of collective bargaining.

(x) Respondent engaged in the conduct described above in paragraph 5(v) without prior notice to the Union and without affording the Union an opportunity to bargain with Respondent with respect to this conduct and the effects of this conduct.

(y) By the conduct described above in paragraphs 5(m) and (n), Respondent has been discriminating in regard to the hire or tenure or terms or conditions of employment of its employees, thereby discouraging membership in a labor organization in violation of Section 8(a)(1) and (3) of the Act.

(z) By the conduct described above in paragraphs 5(u), (v), and (x), Respondent has been failing and refusing to bargain collectively and in good faith with the exclusive collective-bargaining representative of its employees in violation of Section 8(a)(1) and (5) of the Act.

(aa) The unfair labor practices of Respondent described above affect commerce within the meaning of Section 2(6) and (7) of the Act.

6. It may be fairly anticipated that, unless enjoined and restrained, Respondent will continue its aforesaid unlawful acts and conduct in violation of Sections 8(a)(1), (3), and (5) of the Act.

7. Unless the continuation or repetition of the above-described unfair labor practices is restrained, a serious failure of enforcement of important provisions of the Act, and of public policy embodied in the Act, will result before an ultimate order of the Board can issue.

8. To avoid the serious consequences set forth above, it is essential, appropriate, just and proper, for the purposes of effectuating the policies of the Act and of avoiding substantial, irreparable, and immediate injury to such policies, to employees, and to the public interest, and in accordance with Section 10(j) of the Act, that, pending the final disposition of the matters involved herein pending before the Board, Respondent be enjoined and restrained from the commission of the acts and conduct described, similar or related acts or conduct, or repetitions thereof.

CONCLUSIONS OF LAW

1. This Court has jurisdiction of the parties and of the subject matter of the proceeding, and under Section 10(j) of the Act, is empowered to grant injunctive relief.

2. There is, and Petitioner has, reasonable cause to believe that:

(a) Respondent is, and has been at all times material herein, an employer engaged in commerce within the meaning of Sections 2(2), (6), and (7) of the Act.

(b) The Union is, and has been at all times material herein, a labor organization within the meaning of Section 2(5) of the Act.

(c) Respondent has engaged, and is engaging, in unfair labor practices within the meaning of Sections 8(a)(1), (3), and (5) of the Act, affecting commerce within the meaning of Sections 2(6) and (7) of the Act, and a continuation of these unfair labor practices will impair the policies of the Act as set forth in Section 1(b) thereof.

3. To preserve the issues for the orderly determination as provided in the Act, it is appropriate, just and proper that, pending the final disposition of the matters herein involved pending before the Board, Respondents, its officers, representatives, agents, servants, employees, attorneys, and all members and persons acting in concert or participation with them, be enjoined and restrained from the commission, continuation, or repetition of the acts and conduct set forth in Findings of Facts paragraph 5, above, acts or conduct in furtherance or support thereof, or like or related acts or conduct, the commission of which in the future is likely or may fairly be anticipated from the Respondent's act and conduct in the past.

Done at Pittsburgh, Pennsylvania this ____ day of _____, 2018.

UNITED STATES DISTRICT JUDGE